



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96861; File No. SR-CboeBZX-2022-038]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, to Amend Rule 11.28(a) to Extend the MOC Cut-Off Time for Cboe Market Close

February 9, 2023.

I. Introduction

On August 5, 2022, Cboe BZX Exchange, Inc. (“BZX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend BZX Rule 11.28(a) to extend the cut-off time for accepting Market-on-Close orders entered for participation in the Cboe Market Close. The proposed rule change was published for comment in the Federal Register on August 24, 2022.³

On October 4, 2022, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On November 11, 2022, the Exchange submitted Amendment No. 1 to the proposed rule change.⁶ Amendment No. 1 was published for comment in the Federal Register and, under

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 95529 (August 17, 2022), 87 FR 52092.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 95967, 87 FR 61425 (October 11, 2022).

⁶ Amendment No. 1 amended and superseded the proposed rule change as originally filed. Amendment No. 1 is available on the Commission’s website at:
<https://www.sec.gov/comments/sr-cboebzx-2022-038/srcboebzx2022038.htm>.

Section 19(b)(2)(B) of the Act,⁷ the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁸

The Commission has received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal, as Modified by Amendment No. 1

Cboe Market Close (“CMC”) provides the Exchange’s Members⁹ an optional closing match process for non-BZX-listed securities. Currently, pursuant to BZX Rule 11.28(a), Members may enter, cancel, or replace Market-on-Close (“MOC”) orders designated for participation in CMC beginning at 6:00am¹⁰ up to 3:35pm (“MOC Cut-Off Time”).¹¹ The Exchange states that the CMC closing match process – the matching of all buy and sell MOC orders entered into the BZX system by time priority at the MOC Cut-Off Time, the electronic notification to Members of any unmatched MOC orders, and the dissemination by the Exchange in the Cboe Auction Feed of the total size of all buy and sell orders matched via CMC – generally occurs within microseconds.¹²

The Exchange now proposes to move the MOC Cut-Off Time from 3:35pm to 3:49pm. The Exchange states that its Members have requested an MOC Cut-Off Time that is closer to the end of its regular trading hours (4:00pm) so that they may retain control of their trading for a

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Securities Exchange Act Release No. 96359 (November 18, 2022), 87 FR 72527 (November 25, 2022) (“Order Instituting Proceedings”).

⁹ The term “Member” means any registered broker or dealer that has been admitted to membership in the Exchange. See BZX Rule 1.5(n), definition of “Member.”

¹⁰ All times referenced in this order are Eastern Time.

¹¹ See Order Instituting Proceedings, 87 FR at 72528.

¹² See *id.* at 72530 n.34. The Exchange states that, while the duration may vary, the total matching process typically takes a fraction of a second – about 948 microseconds – with the maximum being around one second. See *id.* at 72531 n.41.

longer period and better manage their trading at the close.¹³ The Exchange also states that its Members have indicated that extending the MOC Cut-Off Time to 3:49pm will help make CMC a more comparable alternative to the New York Stock Exchange (“NYSE”) and Nasdaq,¹⁴ which have extended the MOC cut-off times for their closing auctions closer to 4:00pm (to 3:50pm and 3:55pm, respectively).¹⁵ The Exchange further states that closing price match services offered by off-exchange venues, including alternative trading systems, have grown in popularity, and that such venues offer an MOC cut-off time as close as 30 seconds before the primary exchanges’ cut-off times.¹⁶

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder.¹⁷ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,¹⁸ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not be designed to permit

¹³ See id. at 72529. The Exchange posits that market participants may prefer to trade as close to 4:00pm as possible because doing so can provide them with more time to seek better priced liquidity for their orders, as well as give them more time to determine the size of their outstanding orders that they may decide to commit to CMC, the primary exchanges’ closing auctions, or services offered by off-exchange venues. See id. at 72529-31.

¹⁴ See id. at 72529.

¹⁵ See id. at 72528 and n.25.

¹⁶ See id. at 72528-59 and n.27.

¹⁷ In approving this proposed rule change, as modified by Amendment No. 1, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(5).

unfair discrimination between customers, issuers, brokers, or dealers; and Section 6(b)(8) of the Act,¹⁹ which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange proposes an MOC Cut-Off Time of 3:49pm, which would be one minute prior to NYSE's current MOC cut-off time of 3:50pm and six minutes prior to Nasdaq's current MOC cut-off time of 3:55pm.²⁰ The Exchange states that it discussed the proposed 3:49pm MOC Cut-Off Time with both current CMC users and potential new CMC users and confirmed that both groups could technologically manage the proposed change.²¹ The Exchange states that today's market participants, including CMC users, rely on electronic smart order routers, order management systems, and trading algorithms, which make routing and trading decisions on an automated basis, in times typically measured in microseconds.²² The Exchange states that CMC's current users utilize third-party providers or broker-dealers that provide them with electronic trading technology, enabling them to quickly react to market conditions and messages; and further states that market participants that may not currently possess internal high-speed routing and trading technology may, and likely already do, utilize such service providers.²³ The Exchange thus believes that if a CMC user receives a message that their MOC order was not matched in CMC, such user would have more than enough time to re-route their MOC order to

¹⁹ 15 U.S.C. 78f(b)(8).

²⁰ It would be 10 minutes prior to NYSE Arca, Inc.'s MOC cut-off time of 3:59pm. See Order Instituting Proceedings, 87 FR 72534.

²¹ See id. at 72530. Specifically, the Exchange discussed the proposed change with the two third-party providers whose end users are responsible for 100 percent of CMC's current volume. These providers indicated that the automated routing and trading solutions that they offer to CMC users can appropriately manage a 3:49pm MOC Cut-Off Time. Additionally, the Exchange discussed the proposed change with approximately 60 potential new CMC users. These market participants indicated that extending the MOC Cut-Off Time would likely encourage them to use CMC as part of their trading strategies because it would enable them to hold onto and trade their orders closer to 4:00pm and make CMC a more viable alternative to the primary exchanges' closing auctions. See id. at 72530 n.35.

²² See id. at 72530.

²³ See id. at 72531.

the primary exchange.²⁴ The Commission believes that the data and survey information provided by the Exchange support the Exchange's contention that a 3:49pm MOC Cut-Off Time would provide CMC users with adequate time to receive electronic notification of any unmatched MOC orders and participate in the primary exchanges' closing auctions, should they choose to do so.²⁵ Further, enabling CMC users to retain control of their trading for a longer period could encourage participation in CMC by market participants who are unwilling to give up flexibility and control over their MOC orders starting at 3:35pm and may therefore promote competition among MOC order execution venues.

The Exchange also states that CMC's total matched shares information would still be disseminated by the Exchange free of charge via the Cboe Auction Feed, albeit at the new proposed MOC Cut-Off Time of 3:49pm. According to the Exchange, because of the speeds and widespread use of market technology, market makers on the primary exchanges could, should they choose to do so, incorporate the Cboe Auction Feed information into their closing processes.²⁶ Further, the Exchange states that it discussed the proposed 3:49pm MOC Cut-Off Time with four designated market makers for the primary exchanges who confirmed that, while they do not currently monitor the Cboe Auction Feed, they are technically equipped to do so.²⁷ Therefore, with a 3:49pm MOC Cut-Off Time, market participants should continue to have opportunities to utilize CMC's total matched shares information, should they choose to do so.²⁸

²⁴ See id. at 72530. According to the Exchange, because the total matching process typically takes a fraction of a second, with the maximum around one second, with a 3:49pm MOC Cut-Off Time, a user should, in most instances, know the paired CMC quantity no later than 3:49:01pm, leaving the user at least 59 seconds to re-route any unpaired MOC orders to the primary exchanges' closing auctions. See id. at 72531 n.41.

²⁵ The Commission solicited comment in the Order Instituting Proceedings on the Exchange's evidence and assertions with respect to these timing considerations and received no contradictory information.

²⁶ See Order Instituting Proceedings, 87 FR 72531.

²⁷ See id. at 72531 n.46.

²⁸ The Commission also solicited comment in the Order Instituting Proceedings on the Exchange's evidence and assertions with respect to the dissemination of total matched shares information and received no contradictory information.

The Commission notes that, other than the extension of the MOC Cut-Off Time, the Exchange proposes no changes to the CMC process.²⁹ As noted above, the Exchange's survey information and data indicate that CMC users and other market participants could accommodate an MOC Cut-Off Time of 3:49pm and the total matched shares information would be disseminated by the Exchange free of charge at the new MOC Cut-Off Time. Therefore, the Commission believes that the proposed extension of the MOC Cut-Off Time to 3:49pm should not significantly contribute to increased market complexity or operational risk.³⁰ Finally, the proposed extension of the MOC Cut-Off Time should not adversely impact the ability of existing self-regulatory organization surveillance and enforcement activity to deter market participants who might seek to abuse CMC or use CMC information to abuse a closing auction on a primary exchange.

Based on the foregoing, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³¹ that the proposed rule change (SR-CboeBZX-2022-038), as modified by Amendment No. 1, be and hereby is approved.

²⁹ See Order Instituting Proceedings, 87 FR 72528.

³⁰ Moreover, the Commission previously found that CMC "should not significantly increase market complexity and operational risk because it will simply constitute an additional optional MOC order execution venue for market participants, and an optional data feed that market participants may choose to monitor for information regarding the total size of matched MOC orders via Cboe Market Close." Securities Exchange Act Release No. 88008 (January 21, 2020), 85 FR 4726, 4729 (January 27, 2020) (Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to Introduce Cboe Market Close, a Closing Match Process for Non-BZX Listed Securities under New Exchange Rule 11.28).

³¹ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Sherry R. Haywood,

Assistant Secretary.

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³² 17 CFR 200.30-3(a)(12).